IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

OP.No. 4683 of 2002(G)

PETITIONER:

K.V.RAMAKRISHNAN, AGED 70 YEARS,
S/O. LATE VALAYI, KALLADA HOUSE, THANISSERY
VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

*SMT. K.S.THANKAM, AGED 64 YEARS,
W/O. LATE K.V.RAMAKRISHNAN,
KALLADA HOUSE, THANISSERY VILLAGE,
MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

(*IMPLEADED AS ADDITIONAL PETITIONER AS PER ORDER DATED 21/02/2006 IN I.A. NO. 2400/06).

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:
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1. THE WELFARE FUND INSPECTOR-II,
KERALA TODDY WORKERS WELFARE FUND BOARD, THRISSUR.

2. M.V.SUKUMARAN, S/O. VELU,
EDATHURUTHY VILLAGE, CHANDRAPPINNI P.O.,
KODUNGALLUR, THRISSUR DISTRICT.

3. O.N.SATHEESAN, S/O. NATHAN, OTTALI HOUSE
KATTOOR VILLAGE, MUKUNDAPAURAM TALUK,
THRISSUR DISTRICT.

4. THE SECRETARY, LABOAUR &
REHABILITATION (B) DEPARTMENT,GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

5. THE DEPUTY TAHSILDAR (R.R),
MUKUNDAPAURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.K.HARILAL, SC, KTWWF BOARD
ADV. SHRI.V.TEKCHAND, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON 12/11/2007 DELIVERED THE FOLLOWING:

OP NO. 4683/2002

ORDER ON CMP NO. 8383/2002 IN OP NO. 4683/2002

DISMISSED.

12/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE FINAL DETERMINATION ORDER DATED 20/06/2001 PASSED BY THE 1ST RESPONDENT.

P2 : COPY OF the APPEAL DATED 03/01/2002 FILED BEFORE THE 4TH RESPONDENT.

P3 : COPY OF THE STAY PETITION DATED 03/01/2002 FILED BEFORE THE 4TH RESPONDENT.

P4 : COPY OF THE PETITION DATED 03/01/2002 FOR CONDONATION OF DELAY FILED BEFORE THE 4TH RESPONDENT.

P5 : COPY OF THE ORDER DATED 11/01/2002 PASSED BY THE 4TH RESPONDENT.

P6 : COPY OF THE DEMAND NOTICE DATED 21/12/2001 ISSUED BY THE 5TH RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 4683 of 2002

Dated, this the 12th day of November, 2007

J U D G M E N T

Heard learned counsel for petitioner, learned Government Pleader for 4th respondent.

2. Petitioner is challenging Ext.P5 order, whereunder appeal filed against final determination order determining contribution towards Toddy Worker's Welfare Fund is rejected by the Government on the ground of delay. This Court has held that the Government has no power to condone the delay in filing appeal against final determination order vide judgment in **Kerala Motor Transport Workers' Welfare Fund Board** Vs. **Government of Kerala**, reported in 2001 (1) KLT 608. In the circumstances, challenge against Ext.P5 is not maintainable.

3. Learned counsel for the petitioner contended that even if challenge against Ext.P5 is not maintainable, petitioner is entitled to challenge Ext.P1 on merits in this proceedings. According to the petitioner Ext.P1 is an arbitrary order and petitioner has no liability as the licensees were respondents 2 & 3. However, on going through Ext.P1, I find that the adjudicating officer has established that the petitioner and one Mr.V.K.Asokan carried on the business

in the toddy shops along with the licensees and recovered welfare fund contributions from the employees. The above findings are based on evidence from the employees, their union etc. There is no scope for entertaining challenge against Ext.P1, because liability towards toddy workers' welfare fund is demanded from those who were running toddy shops as employers. Since petitioner along with others were found to have carried on business in all the toddy shops, there is no scope for entertaining challenge against the adjudication proceedings. I do not find any infirmity in Ext.P1, which is made based on evidence collected from the employees. This original petition is, therefore, devoid of any merit and is dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg